

Section 24.2 Administrative Leave

An immediate supervisor, a department head, or the City Manager shall have the power to place a subordinate employee on administrative leave with pay pending investigation of a matter in which an employee may be involved which may lead to disciplinary action against that employee, or pending consideration of possible disciplinary action against the employee, or where such employee's continued presence would, in the judgment of the supervisor, department head, or City Manager, jeopardize the health or safety of the employee or others. An immediate supervisor placing an employee on such leave shall immediately notify the department head who shall immediately notify the City Manager in writing. The department head or City Manager may terminate such administrative leave with pay. A department head implementing such administrative leave with pay shall immediately notify the City Manager in writing. The City Manager shall have the power to rescind the action placing the employee on administrative leave with pay, extend the duration of the leave, or reduce the duration of the leave.

Section 25. Grievances

(a) Definition. A grievance shall be defined as any dispute which involves the interpretation or application of any provision of this Memorandum of Understanding during its term, excluding the following:

(1) All ordinances, resolutions, rules and regulations, the subject of which is not specifically covered by the provisions of this Memorandum of Understanding.

(2) Any disciplinary action taken against any employee within the bargaining unit, including, but not limited to discharge, demotion, suspension, reduction in pay, and oral and written reprimand.

(3) Any provision of this Memorandum of Understanding which specifically states that its operation shall not be subject to the grievance procedure.

(b) Procedure. Grievances shall be processed in the following manner only:

(1) Initial presentation. The initial (first-level) presentation of a grievance shall be to the immediate supervisor of the employee claiming to have a grievance. The grievance may be either oral or in writing. If made in writing, the grievance shall comply with the requirement of subsection (2) for a formally presented grievance.

(2) Formal presentation. The formal presentation of a grievance shall

be written and shall state which provision of this Memorandum of Understanding has been misapplied to the grievant's detriment, and shall indicate the redress sought. The grievance shall be signed by the individual allegedly aggrieved. In the event that more than one individual is alleged to be aggrieved, the grievance may be signed by a duly authorized representative of the bargaining unit, in which case the grievance shall indicate the names of the person on whose behalf it is filed and shall state that the bargaining unit representative is authorized to file such grievance on behalf of such persons. In the event the person to whom the grievance is presented determines that the grievance is defective on its face, such person shall reply in writing to the filer within 7 days after receiving the grievance, indicating in writing the specific defects. The reply shall specify that the grievant has 10 days to correct the defects or the grievance shall be deemed to be withdrawn. If the grievance is not corrected within said 10-day period, it shall be deemed to have been withdrawn.

(3) Department head. A grievance which is not settled at the first level may, within 10 days of the decision of the supervisor, be appealed in writing to the department head. If so appealed, the grievance, unless previously formally presented, shall be presented as provided in subsection (2). The department head shall render a decision and comments in writing and return them to the employee within 10 days after receipt of the formal grievance.

(4) City Manager. A grievance which is not settled at the department head level may be appealed in writing to the City Manager within 10 days of the decision of the department head. Within 10 days after receipt of the appeal, the City Manager shall set a date, which is not more than 10 days from the date of receipt of the appeal, to meet with the grievant and with other appropriate persons to attempt to resolve the grievance. If a solution is not agreed upon, the City Manager shall render a decision within 10 days of the meeting.

(c) Power of immediate supervisors and department heads in resolving grievances. In the resolution or decision of a grievance, no immediate supervisor or department head shall modify any procedure or rule within the department unless and until such person shall have received the written approval of the City Manager.

(d) Time limits. Grievance shall be filed within 15 days of the incident or occurrence about which the employee claims to have a grievance.

(e) Representation. The grievant shall have the right at all steps of the grievance procedure to be represented by a person or organization of the grievant's choice.

(f) Effect of a grievance. The making or filing of a grievance shall not prevent the City or any authorized employee of the City from taking action deemed appropriate, nor shall it have the effect of suspending action previously taken even though the action

may involve or be part of the subject matter of the grievance.

(g) Days. The time limits provided herein refer to calendar days.

(h) Waiver of time limits. The time limits provided herein may be waived by the mutual consent of the parties.

(i) Arbitrator determination. The decision of the City Manager may be appealed in writing for final determination by an arbitrator. The written notice of appeal must be filed with the City Manager within 10 days of the date of the written decision.

(j) Selection of arbitrator. Within 10 days after the filing of the appeal, the City Manager and the grievant shall meet or otherwise communicate to try to select a mutually acceptable arbitrator who agrees to serve. If the parties cannot agree, a list of 5 arbitrators will be obtained from the California State Conciliation Service, American Arbitration Association, or some other source mutually agreed upon. If the parties cannot agree on one of the names on the list, each party (beginning by lot) shall alternately strike 1 name from the list until 1 name remains, who shall be the arbitrator if that person agrees to serve. If that person will not serve, the process shall be repeated until an arbitrator is found.

(k) Decision. The decision of the arbitrator shall be in writing and shall set forth the findings of fact and conclusions on the issues. It shall be submitted to the City Manager and the grievant and shall be final and binding upon the parties. The arbitrator shall avoid expanding or contracting the definition of grievance when arbitrability is at issue.

(l) Limitation. The authority of the arbitrator to render final and binding decisions on grievances extends only to those matters covered by this grievance procedure and over which the City or a department head may legally delegate its decision-making process.

(1) Proposals to add to or change this Memorandum of Understanding or written agreements or addenda supplementary hereto shall not be arbitrable, nor shall any matter or subject arising out of or in connection with such proposal, nor any disciplinary action, as said term is used in subsection (a), be arbitrable.

(m) Costs. The fees of the arbitrator (including any per diem expenses, travel and subsistence expenses), the cost of any hearing room, and the cost of

preparing the transcript of the hearing, if any, for the arbitrator shall be borne one-half by the City and one-half by the grievant or the representative of the bargaining unit. All other costs shall be borne by the party incurring them.

(n) Payment of compensation. A dispute pertaining to payment of compensation shall not be deemed a grievance under this section unless the employee alleges that the employee is not being compensated in accordance with the provisions of this Memorandum of Understanding. Any other matter of compensation shall be resolved through the meeting and conferring process, and if it is not detailed in a Memorandum of Understanding resulting from the process it shall be deemed withdrawn until the meeting and conferring process is next open for discussion.

(o) Changes in Memorandum of Understanding. No changes in this Memorandum of Understanding or interpretations thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized, unless agreed to by the City Manager and the bargaining unit representative.

Section 26. Loss of Driver's License

(a) An employee who does not have a driver's license in force and effect so as to be unable to operate a vehicle during the course of such employee's duties for a period of less than 6 months may, at the discretion of the City Manager, be subject to a salary reduction of 10% during such period. If the lack of a valid driver's license significantly prevents the employee from performing a predominant amount of the employee's duties, the City Manager may suspend the salary and benefits of the employee for the duration of the time that there is no license in effect.

(b) If the driver's license of an employee is suspended or revoked for a period of 6 months or more so as to prevent the employee from lawfully operating a vehicle during the course of the employee's duties, or if the employee fails to notify the City of any suspension or revocation or failure to renew the employee's driver's license, regardless of duration, such shall be cause for dismissal. This does not limit the City from taking other disciplinary action if otherwise justified.

(c) If the loss of a driver's license is attributable to the use of alcohol or drugs, the employee shall agree to and shall faithfully participate in a counseling and rehabilitation program agreed to by the City to correct the problem if requested to do so by the City Manager. Failure to agree and failure to faithfully participate in the program shall be cause for dismissal.

Section 27. No Strike

(a) Participation in any job action, as defined in Section 17.1(b)(10) (Suspension of Sick Leave) of this Memorandum of Understanding, by an employee pertaining to employment with the City of San Bruno shall constitute an automatic resignation from the position, and said position shall then be deemed for all purposes to be vacant.